

ESTATE OF JOSEPH DUPOINT

IBIA 84-18

Decided August 20, 1984

Appeal from an order denying reopening issued by Administrative Law Judge Sam E. Taylor in IP OK 240 P 83, H-133-54.

Vacated and remanded.

1. Indian Probate: Reopening: Generally--Indian Tribes: Membership

When reopening of a closed Indian estate is sought for the sole purpose of determining the appellant's nationality or Indian status, and no alteration in the distribution of the decedent's estate is sought, reopening will be allowed under 43 CFR 4.206 without regard to the restrictions set forth in 43 CFR 4.242 and in previous decisions of the Board of Indian Appeals interpreting that regulation.

APPEARANCES: Geneva Sue Dupoint Jenkins, pro se. Counsel to the Board: Kathryn A. Lynn.

OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

On January 30, 1984, the Board of Indian Appeals (Board) received a notice of appeal from Geneva Sue Dupoint Jenkins (appellant). Appellant sought review of a December 6, 1983, order issued by Administrative Law Judge Sam E. Taylor denying reopening of the estate of Joseph Dupoint (decedent). Probate of decedent's Indian trust estate was concluded on February 20, 1964, with the issuance of an order determining his heirs. A possible relationship between decedent and appellant's mother was not discussed in that order.

Appellant seeks to reopen the estate in order to show that decedent was her grandfather. Appellant does not seek to alter the distribution of decedent's estate, but only to establish her own correct Indian blood quantum.

Reopening was denied on the grounds that appellant had failed to show due diligence in pursuing this matter. The due diligence requirement derives from the Board's interpretation of the reopening regulations set forth in 43 CFR 4.242. See, e.g., Estate of Joseph Wyatt, 11 IBIA 244 (1983).

[1] In Estate of Edward (Agopetah) Bert, 12 IBIA 253, 91 I.D. 235 (1984), the Board held that the Government's right and duty to hold property in Indian trust for an individual may depend upon whether that individual

has Indian status under the enrollment rules adopted by his or her tribe. Such status may, in turn, depend upon the individual's Indian blood quantum, often as determined as a result of Departmental probate proceedings. Indian status is a fundamental right. When reopening of a closed Indian estate is sought for the sole purpose of determining Indian blood quantum or Indian status, and not for the purpose of altering the distribution of the decedent's estate, reopening should be granted under 43 CFR 4.206 ^{1/} without regard to the restrictions set forth in 43 CFR 4.242 and in previous Board decisions interpreting that regulation. Those restrictions are intended to permit the finality of administrative determinations of the status of property, not to foreclose consideration of fundamental issues relating to personal status. ^{2/}

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the December 6, 1983, order denying reopening of decedent's estate is vacated. Reopening of decedent's estate is ordered for the sole purpose of considering whether appellant can establish that decedent was her grandfather, and for no other purpose. The case is remanded to the Administrative Law Judge for this determination. The decision of the Administrative Law Judge shall be final unless it is properly appealed under the provisions of 43 CFR 4.320.

Bernard V. Parrette
Chief Administrative Judge

We concur:

Jerry Muskrat
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

^{1/} Section 4.206 states:

"In cases where the right and duty of the Government to hold property in trust depends thereon, administrative law judges shall determine the nationality or citizenship, or the Indian or non-Indian status, of heirs or devisees, or whether Indian heirs or devisees of United States citizenship are of a class as to whose property the Government's supervision and trusteeship have been terminated (a) in current probate proceedings or (b) in completed estates after reopening such estates under, but without regard to the 3-year limit set forth in § 4.242."

^{2/} The same analysis applies to the question of nationality. See In re Status of Gladys Rose Charles Whims, Docket No. IBIA 83-22-A, orders of June 20 and Nov. 9, 1983.